

REMARKS/ARGUMENTS

Applicants thank the Examiner for entering the last amendment after final, but wish to re-enter prosecution rather than continue with the Appeal at this time. This amendment is concurrently filed with a timely request for continued examination and an information disclosure statement. Claims 1-53 have been canceled without prejudice or disclaimer. Applicants present new claims 54-90 for examination. The new claims find support through-out the originally filed specification and reflect subject matter previously presented in the originally filed claims and/or previously presented and examined subject matter. However, the independent claims 54, 68, 77, 80, and 84, which are based on canceled independent claims 1, 10, 17, 25, and 41, respectively, no longer recite “through openings,” but merely “openings,” no longer recite “deformable and non-deformable members,” nor specify a location of the openings on non-deformable members. All independent claims now include various recitations of the concept that the same drug is present in both the first and second beneficial agents, but that the first and second beneficial agents differ from each other in some way.

Claims 54-90 are patentable over Scheerder et al. and Hossainy et al.

Applicants submit that new claims 54-90 are patentable over Scheerder et al., (U.S. Pat. Pub. No. 2002/0007209), in view of Hossainy et al., (U.S. Pat. No. 6,558,733). Neither Scheerder et al. nor Hossainy et al. teaches or suggests a device that includes a first plurality of openings containing a first beneficial agent and a second plurality of openings containing a second beneficial agent, wherein the same drug is in both the first and second beneficial agents, but the first and second beneficial agents differ from each other in some way. Scheerder et al. mentions in passing using barrier coatings or multiple layers of drugs having different concentrations as ways to control the release rate, see para. [0152], however, Scheerder et al.’s disclosed methods of applying the medicine or genes—either immersing the perforated prosthesis into the solution or spraying the solution onto the perforated prosthesis to fill the holes (and coat the outer surface) and then optionally removing the therapeutic agent and optional polymer from the outer surface of the prosthesis—result in all holes having the same composition, whether a homogeneous composition or one with multiple layers.

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Applicants earnestly solicit allowance of pending claims 54-90.

Please construe this paper as a petition for a one-month extension of time. Applicants authorize the Commissioner to debit the corresponding fee under 37 CFR §1.17 from Deposit Account No. 10-0750/CMI5007USNP1/KLM. Should additional fees be necessary in connection with the filing of this paper the Commissioner is hereby authorized to charge Deposit Account No. 10-0750/CMI5007USNP1/KLM for any such fees.

Respectfully submitted,

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